APPENDIX

Opinion

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 17,610

BURTON MERCANTILE & GIN COMPANY, INC., *Appellant*

v.

W. WILLARD WIRTZ, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

(November 17, 1964)

Before Van Oosterhout and Mehaffy, Circuit Judges, and Davies, District Judge.

PER CURIAM.

This is an appeal by defendant employer from a judgment obtained by the Secretary of Labor enjoining defendant from violating the minimum-wage, overtime and record keeping requirements of the Fair Labor Standards Act as amended (29 U. S. C. A., Sec. 201 et seq.) with respect to employees at two cotton gins operated by the defendant in Jackson County, Arkansas.

The basic issue presented by this appeal is whether Sect. 13 (a) (10) is applicable prior to the 1961 amendment to the Act and Sec. 13 (a) (18) applicable thereafter exempt

from the minimum-wage, overtime and record-keeping provisions of the act the following classes of employees:

1. Clerical employees at any time.

2. Mechanical employees performing repair and maintenance work at the gins during the dormant season when no ginning is in progress.

Judge Henley, who heard this case without a jury, in a well-considered opinion reported at — F. Supp. —, determined that Sections 13 (a) (10) and 13 (a) (18) exemptions are based upon the activity of the employees with respect to whom the exemption is claimed, not upon the activities of the employer, and that the exemption granted by each of said sections is limited to those employees who were engaged in actual ginning operations during the period for which the exemption is claimed. The court held that clerical workers were not engaged in ginning at any time and that mechanical employees engaged in the repair and maintenance work about the gin plants during the off-season, when no ginning is done, were not engaged in ginning and hence no such employees were exempt from the operation of the act.

All questions raised upon this appeal are fully considered, discussed and correctly resolved in the trial court's opinion. The facts, the pertinent statutes, the administrative interpretation, the supporting authorities and the basis of decision are all well stated by Judge Henley in his opinion. We affirm upon the basis of such opinion.

Affirmed.

Decree

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

September Term, 1964

No. 17,610

BURTON MERCANTILE AND GIN COMPANY, INC., *Appellant*,

v.

W. WILLARD WIRTZ, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

This cause came on to be heard on the record from the United States District Court for the Eastern District of Arkansas, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here Ordered and Adjudged by this Court that the Decree of the said District Court in this cause be, and the same is hereby, affirmed.

November 17, 1964.

Order entered in accordance
with Opinion:—

Clerk, U. S. Court of Appeals
for the Eighth Circuit.